

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATHAN HOYE,	)	
	)	
Plaintiff,	)	2:18-CV-1391
	)	
vs.	)	Judge Nora Barry Fischer
	)	
ALLEGHENY COUNTY JAIL,	)	
	)	
Defendant.	)	

**MEMORANDUM ORDER**

This case was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72. Hoyer alleges that in 2013 Allegheny County Jail improperly charged his inmate account \$2000.00 for a walkie talkie that only cost \$150.00.

On October 22, 2018, the Magistrate Judge issued a Report recommending that the Motion for Leave to Proceed *in forma pauperis* be denied as Plaintiff had not satisfied the imminent danger exception to the three strikes rule of 28 U.S.C. § 1915(g). (ECF No. 3). Plaintiff was served with the Report and Recommendations at his listed address of record and advised that written objections were due by November 8, 2018. On November 7, 2018, the Report and Recommendation was returned unopened to the Court with the following notation on the envelope: "RTS. Temp. Release." (ECF No. 4). Upon inquiry, the Court was informed that Plaintiff had been transferred to Torrance State Hospital and was unable to file timely objections. On November 8, 2018, the Court sua sponte filed an Order granting Plaintiff an extension until December 10, 2018, to file written objections to the Report and Recommendation. (ECF No. 5).

On December 4, 2018, the Court was informed that Plaintiff remained in custody at Torrance State Hospital. The case was then statistically closed until such time as Plaintiff

notified the Court of his return to Allegheny County Jail. (ECF No. 6). On January 3, 2019, Plaintiff notified the Court that he had been returned to Allegheny County Jail. (ECF No. 7). The case was reopened and Plaintiff was granted an extension until January 24, 2019, to file his written objections. (ECF No. 8). To date, Plaintiff has not filed any objections in this case nor has he sought an extension of time in which to do so.

After a review of the pleadings and documents in this case, together with the Report and Recommendation, the Court finds that the Magistrate Judge made a sound recommendation. As the United States Court of Appeals for the Third Circuit has instructed, a plaintiff must allege facts showing that he was in imminent danger at the time the complaint was filed. *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir.), *cert. denied*, 533 U.S. 953 (2001). The following Order is entered:

The Motion for Leave to Proceed *in forma pauperis* is **DENIED**, and this action is dismissed without prejudice to Plaintiff's right to reopen it by paying the full statutory and administrative filing fees, totaling \$400.00. The Report and Recommendation of the Magistrate Judge, dated October 22, 2018, hereby is **ADOPTED** as the Opinion of the District Court.

**IT IS SO ORDERED** this 8th day of February, 2019.

/s Nora Barry Fischer  
Nora Barry Fischer  
United States District Judge

cc: NATHAN R. HOYE , 167618  
Allegheny County Jail  
950 2nd Avenue  
Pittsburgh, PA 15219-3100